

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
JFK Federal Building, Government Center
Room 2275
Boston, Massachusetts 02203



Division of Medicaid & Children's Health / Region I

September 29, 2005

Michael K. Smith, Secretary
Agency of Human Services
103 South Main Street
Waterbury, Vermont 05671-0201

Dear Mr. Smith:

The Centers for Medicare & Medicaid Services (CMS) approved the Global Commitment to Health §1115 Demonstration on September 27, 2005, with an anticipated start date as early as October 1, 2005. We understand that the Agency of Human Services (AHS) and the Office of Vermont Health Access (OVHA) are prepared to commence operations under the Demonstration. The responsibilities of AHS and OVHA for the administration of the Demonstration Program are described in an Inter-Governmental Agreement (IGA). CMS considers the IGA a comprehensive risk contract and therefore is subject to the requirements found at 42 CFR 438.

CMS has had the opportunity to review a draft version of the IGA. CMS has found that the draft version complies with the programmatic provisions of 42 CFR Part 438. The IGA must also meet the requirements governing payments under comprehensive risk contracts. Payments must be actuarially sound. That is, the payments must have been developed in accordance with generally accepted actuarial principles and practices; are appropriate for the population and services to be furnished under the contract, and have been certified by an actuary who meets the qualifications and standards established by the American Academy of Actuaries.

CMS understands that AHS is working diligently to ensure that the payments meet the above requirements. We also understand that the process requires considerable time. We have met with AHS staff and understand that the approach will ultimately result in payments that meet the above requirements.

Given the timing of the approval for the Demonstration Program and the desire of all parties to implement the Program as expeditiously as possible, CMS understands that it will be necessary for AHS to pay OVHA an interim rate that may not fully comply with the above requirements. CMS also understands that AHS intends to revise the interim payment once actuarial certification is received and once the payment rates fully comply with the requirements.

CMS wants to assure you that we support this approach and that we have no reason to believe that Federal Financial Participation for the payments between AHS and OVHA is at risk. We look forward to working closely with you in the weeks ahead to ensure full compliance as soon as possible.

Should you have any questions or concerns, please contact Chong Tieng or Arthur Douglas. They can be reached at (617) 565-9157 or (617) 565-1288, respectively.

Sincerely yours,

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Richard R. McGreal
Acting Associate Regional Administrator

cc:

Joshua Slen, Director, OVHA

Ira Sollace, Chief Financial Officer, AHS

Joint Fiscal Committee

Motion to approve with amendments the recommendation of the Health Access Oversight Committee to grant contingent approval of the Global Commitment to Health Demonstration Waiver Program.

Approved: September 30, 2005, unanimously.

Senator Bartlett, seconded by Representative Westman, moved:

That the recommendation of the Health Access Oversight Committee to the Joint Fiscal Committee to grant contingent approval of the Global Commitment to Health Demonstration Waiver Program is accepted and approved by the Joint Fiscal Committee with amendments, and that as amended, the Joint Fiscal Committee moves:

(a) That the Joint Fiscal Committee, pursuant to its authority under Section 250(c) of Act 71 of 2005, grant contingent approval to the Global Commitment to Health Demonstration Waiver Program negotiated by the Administration and the Centers for Medicare and Medicaid Services (CMS) as delineated in Special Terms and Conditions, Number 11-W-00914/1, dated September 27, 2005, and that pursuant to this contingent grant of approval the Administration may begin implementation of the Demonstration Waiver Program on October 1, 2005 for the five year period, from October 1, 2005 through September 30, 2010.

(b) That the Joint Fiscal Committee's full approval to the Global Commitment to Health Demonstration Waiver Program be granted on or before November 17, 2005, if, on or before that time, the Joint Fiscal Committee finds that the following conditions have been met:

(1) *Complete demonstration provisions furnished.* That a complete and

comprehensive listing and description of all the provisions of the Demonstration Waiver agreement be prepared and included in the letter of acceptance to CMS by the Office of Vermont Health Access (OVHA) and provided to the Joint Fiscal Committee, comparing the original proposal for the Demonstration Waiver Program with the outcome of the negotiations with CMS; and that the Joint Fiscal Committee finds that these final provisions are in accord with the terms and conditions presented to the Joint Fiscal Committee as the basis for its contingent approval.

(2) *Final premium amounts determined to be sufficient.* That OVHA present to the Joint Fiscal Committee the final premium amounts adopted by the Agency of Human Services (AHS) upon actuarial certification, and that the Joint Fiscal Committee finds that such amounts are sufficient to support the Demonstration Waiver Program including the state's current Medicaid and expansion programs.

(3) *Agreement regarding future years' premiums.* That AHS work with CMS regarding the criteria utilized in future waiver years in order to ensure that future premiums will not be negatively affected by successful cost savings efforts achieved by the state, and that OVHA report to the Joint Fiscal Committee and the Health Access Oversight Committee on the status and provisions of any agreement reached.

(4) *MCO Savings Identified.* That OVHA present to the Joint Fiscal Committee a list of criteria and an updated list of MCO targeted health care investments which support the administration's recommendation that the financial value of the Demonstration Waiver program to the state is within the range of \$135 million to \$165 million.

(5) *Attorney General Review.* That the Attorney General review as to form the

Special Terms and Conditions (STC), the Intergovernmental Agreement (IGA), and other legal documents regarding the demonstration waiver program.

(c) That by granting contingent approval of the Demonstration Waiver program, the Joint Fiscal Committee cedes none of the authority of the General Assembly to determine policy, eligibility and benefits for the Medicaid program (including expansion programs), through legislative enactments, administrative rules review, the state budget and appropriations process, or any other means of legislative oversight. Further, the Joint Fiscal Committee affirm the legislature's commitment to providing health care benefits to low-income Vermonters through the Medicaid program.

(d) That pursuant to #40 of the Special Terms and Conditions, revenue from capitation payments will be used to reduce the rates of uninsured or underinsured and improve the access and quality of services to that group; that the approval letter from the Department of Health & Human Services also indicate that Department's understanding that "Vermont will demonstrate its ability to promote universal access to health care"; and therefore, to the extent that there is unused spending capacity as measured by the difference between the amount necessary to maintain the current Medicaid program and the Demonstration Waiver program's maximum certified premium, that unused spending capacity shall be used to fund health care initiatives authorized by the legislature to improve the access to and quality of health care services received by the uninsured and underinsured.

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CHARLES P. SMITH, SECRETARY

STATE OF VERMONT
AGENCY OF ADMINISTRATION

September 30, 2005

The Honorable Martha Heath, Chair
Joint Fiscal Committee
State House
Montpelier, Vermont 05602

Re: LIHEAP Funding

Dear Representative Heath:

The Administration recommends a benefit level based on current information for the 2005 – 2006 heating season that maintains the state's payment at an average of 62% of the beneficiaries' projected fuel cost. This is the average benefit the state has provided over the past eleven years. This average benefit amount is \$1,364, and it represents a 51.2% increase in the average benefit.

Funding this benefit anticipates a federal contingency award of \$3.2 million, a transfer from the Weatherization Trust Fund of \$3.5 million and a General Fund appropriation of \$3.5 million. We will make a corresponding adjustment to the General Fund amount if the federal contingency award is different than \$3.2 million anticipated.

In order to make the General Funds available immediately, we are requesting the Emergency Board meet as soon as possible and re-allocate General Fund from Correctional Services to LIHEAP. This action would be taken under the Board's authority granted in 32 V.S.A. Sec. 133. We will request an appropriation in the Budget Adjustment Act of the 2006 Session to restore the Correctional Services appropriation to its original level.

I recognize and appreciate the concern of the Legislature that we work together to assure that the recent unprecedented increase in fuel prices not erode the commitment to Vermonters that we made in the FY06 budget last spring.

Sincerely,

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Charles P. Smith
Secretary of Administration



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: Members of the Joint Fiscal Committee

From: Stephanie Barrett

Date: September 30, 2005

Subject: New FY07 FMAP estimate from FFIS

FFIS published new estimates of the FFY07 FMAP estimates for the states. For Vermont the new estimate is higher i.e. better than the FFIS estimate from last March. The impact of this revision is a drop from 42.9% to 41.2% in the estimate of state share for SFY07.

The consensus five year Medicaid forecast relied on the March FFIS estimates in projecting a cumulative \$440 million state fund deficit, the FY07 portion of which is \$76 million. Using the revised FMAP projection for FY07 the cumulative deficit drops to \$370 million, the FY07 portion of which is \$60 million.

The FMAP reflects state relative position in comparison to other states on per capita income. FFIS does not make projections beyond FY07. We assumed a modest decline of 0.5% per year between FY08 and FY10 (i.e. the state picking up an additional 0.5% per year in program cost). It is unclear yet if this revision indicates a need to change our outyear projection from the decline projection to a flat projection for FMAP in FY08 to FY10. If the FMAP did remain flat at the FY07 level for those years the cumulative deficit would drop another \$30 million.

September 29, 2005

To: Members of the Health Access Oversight and Joint Fiscal Committees
From: Rep. Bob Kiss, P/Chittenden District 3-4

Re: Global Commitment Decision

Dear House and Senate Committee Members:

Friday, September 30th, is shaping up to be a day for decision-making regarding legislative support or not for approval of what's been negotiated by the Administration with the federal government related to the Global Commitment. As a member of the General Assembly I'm asking that you delay a final decision until the full legislature can review and discuss this issue when we reconvene in January.

Let me explain why I'm asking that you let me fully participate and vote on this decision.

The consultants made two recommendations that should delay final action to another time. It would be irresponsible to move forward without the actuarial assessment and negotiation of the premium complete. The full hocus-pocus of the Global Commitment windfall promised by the Administration is hinged on a generous determination of the premium in each of five years. Second, the consultants called for a final statement of what is agreed to regarding implementation of the Vermont Medicaid Program under the Global Commitment. They reported there was no summary of changes in the plan from those proposed by the Administration initially and what you are being asked to approve now. This could be trouble in the future. The trail of changes should be sorted out and documented now not later.

The consultants also raised concerns about on-going rate setting for the Global Commitment. The actuary will review and set the premium annually but it was not clear to them how this works. They recommend, "The process for annual changes should be further specified." They also note that by year three, independent of this agreement, "that CMS or (the) HHS inspector general might review rates and discount some of the 'savings' for year three or beyond." This is a red flag.

These are prudent recommendations given the credentials and experience of the consultants as a prior Medicaid director and former CMS waiver-related employee. But, there are additional issues that warrant a delay in decision-making to January these consultants can't address.

There are two big picture issues we should debate with the full details of the Global Commitment in hand. The legislature has embarked on a separate study process aimed at recommendations for health care reform that promises quality health care for all Vermonters. The Global Commitment plan pre-empts this discussion and may also pre-empt a more appropriate negotiation with the federal government related to what we want from the Medicaid Program in the near future. Second, the Global Commitment is

unprecedented in the United States since it agrees to a federal cap on spending for health care for Medicaid-eligible people. No other state has agreed to the violation of the principle that the federal government will share in the cost of providing Medicaid for everyone eligible. In the terms and conditions it is made clear that this cap is in place to put Vermont "at risk for changing economic conditions that impact enrollment levels."

Beyond these big picture concerns, the details of the Global Commitment should also give pause to allow the full General Assembly an opportunity to say "yea" or "nay" on this plan.

An expanded funding opportunity in the Global Commitment is based on a federal match to the premium as it passes through a new public Managed Care Organization (MCO). Numerous variables challenge whether or not this process can sustain Vermont's expanded Medicaid Program beginning with the setting of the premium, the reality of successfully creating a public MCO out of OVHA (this would be the only one in the U.S.), using MCO proceeds (profits in a private MCO?) to pay for health care services provided now with state appropriations not otherwise matchable and including what it means in the terms and conditions to say that the state is "not obligated...to extend eligibility...to...optional or expansion populations." Has someone asked if the Administration already has plans to change program eligibility requirements and benefits?

In the terms and conditions Vermont is allowed to withdraw from this agreement with six months notice and CMS approval. Despite a reference to speed required by "emergent circumstances" it would be unusual for a termination phase-out to occur in as few as six months. If the Global Commitment does not work for Vermont this escape clause is inadequate. The option for withdrawal of the waiver by CMS when continuation of the waiver "would no longer be in the public interest" is very broad authority following the right to suspend or terminate for material non-compliance. In any case, no one should sign on to the Global Commitment because the state can exit "easily."

We all know that the budget shortfall in Medicaid is artificial. The legislature did not provide funding streams for Medicaid adequate to paying the full cost of the Program when it isolated the Medicaid budget for budget and planning purposes. Over the next two years the General Assembly can provide additional resources to support the Medicaid Program while we decide what the best course of action should be for health care in Vermont. Pressure to agree to the Global Commitment by October 1 or lose \$500,000 to \$1M per week (which is it and is this threat real?) should be placed in the larger context of health care reform in this legislative session.

Your decision on Friday should be to delay action on this plan until January when the General Assembly can meet to discuss what the next best steps are for health care reform in Vermont. As a member of the General Assembly I'm asking you to return responsibility for action on the Global Commitment--with the complete details of the Global Commitment in place--to all 180 elected members of the body. I hope you'll take this course.

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MINUTES

Joint Fiscal Committee Meeting of September 30, 2005

Representative Heath, Chair, called the Joint Fiscal Committee meeting to order at 2:15 p.m. in Room 10, State House.

Also present: Representatives Obuchowski, Perry, Severance and Westman
Senators Bartlett, Cummings, Sears (by telephone), Snelling, and Welch

Others attending the meeting included several members of the Senate and House of Representatives; Joint Fiscal Office and Legislative Council staff; Administration staff; representatives of numerous advocacy groups; and the news media.

DISTRIBUTION OF COMMUNICATIONS:

1. The Chair called the members' attention to letters placed in front of them on several subjects not all related to the subject matter of this meeting, including: a September 30 memorandum from the Secretary of Administration on the subject of fuel assistance; a memorandum of the same date from Stephanie Barrett of the Joint Fiscal Office concerning updated FY 2007 FMAP estimates; and a September 29 letter from Representative Kiss asking the Committee to delay a final decision on Global Commitment until the full Legislature can participate.

GLOBAL COMMITMENT – RECOMMENDATION FOR ACTION AND DISCUSSION:

2. The sole subject of this meeting, as announced at the Committee's September 28 meeting on the same topic, was to receive and act on a recommendation from the Health Access Oversight Committee on the Global Commitment Medicaid waiver between the State of Vermont and the federal Centers for Medicare and Medicaid Services (CMS).

At the Chair's invitation, Senator Jeannette White, Chair of the Health Access Oversight Committee, joined the members. She described the paramount reservations of her committee over the waiver proposal, among them time constraints and deep concerns about the rights of Vermont's most vulnerable citizens. She also cautioned that the waiver represents just a partial solution to the overall problem the State faces with respect to Medicaid and health care.

The Health Access Oversight Committee's recommendation was that the Joint Fiscal Committee grant contingent approval of the Global Commitment

waiver program. Senator White reported that while all members of the oversight committee agreed to the conditions placed on her panel's recommendation, the vote was not unanimous: six (6) members voted in favor, three (3) against the recommendation. *[Note: the verbatim recommendation of the oversight committee is on the taped record of both committee's meetings, while these minutes will reflect just the recommendation as approved by the Joint Fiscal Committee.]*

The Senator then proceeded to review the conditions her committee recommended be attached to approval and to explain the intent of each. Her presentation was interspersed with questions of information, process and clarification about the recommendation. Among them was Representative Obuchowski's as to whether Vermont's Attorney General had reviewed the waiver documents, including the Special Terms and Conditions, constituting intergovernmental agreements between CMS and the State. The answer was no. This subject was addressed periodically during the meeting, and the members agreed to the Representative's request to include that requirement in its conditions for granting full approval to the waiver program by November 17.

Although not a part of its formal recommendation, Senator White reported that the Health Access Oversight Committee strongly supports a legislative staff position with responsibility to keep track of implementation of the Global Commitment program and to serve as a liaison with the Administration, the community, and advocacy groups on the subject. Senator Bartlett expressed the opinion that the Legislature is understaffed and needs to create a position for someone to specialize and focus in this area. Other members indicated support for this point of view, and the Joint Fiscal Committee's action reflected that endorsement.

Several of the relatively few changes which the committee decided to add to the oversight committee's formal recommendations resulted from discussion centering on the two committees' role in agreements regarding criteria to be used to ensure that premiums in future years will not be affected negatively by any successful cost savings efforts achieved by the State *[section (b)(3) in the action reflected below]*.

Senator Welch observed that a major concern of legislators is whether the Global Commitment project constitutes any jeopardy to the Legislature's retaining authority over all decisions pertaining to Medicaid and access to health care by shifting authority to the Administration. Senator White replied that her committee gave considerable attention to this subject, and she felt that condition (c) addressed it. She acknowledged that with a part-time citizen Legislature and not a large staff, there is a risk that decisions will be made by the Administration. She pointed out, however, that monitoring the waiver program will be a responsibility of the new staff person.

Senator Welch subsequently made clear that there should be no misconception that agreement to embark on the Global Commitment waiver program indicates willingness on the part of the Legislature to compromise health care for Vermonters.

After the deliberations with Senator White concluded, the Chair invited Administration staff to comment. Joining the Committee were Joshua Slon, Director of the Office of Vermont Health Access; and Susan Besio, Director of Planning, Agency of Human Services.

Mr. Slon distributed a letter dated September 29 to Secretary of Human Services Michael Smith from the Centers for Medicare & Medicaid Services (CMS). That letter conveyed CMS's approval of the Global Commitment Demonstration Waiver program and outlined its understanding of requirements pertaining to premium payments.

Mr. Slon went through each section of the proposed action and cited several points which he requested be modified for clarity or accuracy.

The Chair recalled that at the prior meeting the consultants had stressed, and the Committee agreed, that there should be written documentation of all changes in the agreement that have occurred since the original proposal was submitted to CMS in April. She remarked that it is important to the Joint Fiscal Committee that that process be completed by November 17, the next scheduled meeting date of the committee.

Chief Legislative Counsel William Russell also participated in the discussion, including distributing a version of the Health Access Oversight Committee's recommendation that he redrafted to reflect Mr. Slon's requested changes.

GLOBAL COMMITMENT – NEW LEGISLATIVE STAFF POSITION:

3. On a motion from Senator Welch, seconded by Representative Perry, the Joint Fiscal Committee by voice vote unanimously authorized the establishment of a staff position in the Joint Fiscal Office to assist the Legislature in the oversight and implementation of the Global Commitment to Health Demonstration Waiver Program as approved through action of this Committee [see below]; and to report to and serve as a liaison with the Health Access Oversight Committee, the Joint Fiscal Committee, and the Medicaid Advisory Board on this subject.

Although not included in the action, it was understood that the position probably would be for a one-year period. Prior discussion also reflected the wish of both legislative committees that the individual hired would serve as a liaison between the community and advocates as implementation of the waiver project proceeds.

GLOBAL COMMITMENT PROGRAM APPROVAL:

4. Senator Bartlett moved, and Representative Westman seconded, that the Joint Fiscal Committee accept and approve the recommendation of the Health Access Oversight Committee to grant contingent approval of the Global Commitment to Health Demonstration Waiver Program, with amendments as reflected below:

(a) That the Joint Fiscal Committee, pursuant to its authority under Section 250(c) of Act 71 of 2005, grant contingent approval to the Global Commitment to Health Demonstration Waiver Program negotiated by the Administration and the Centers for Medicare and Medicaid Services (CMS) as delineated in Special Terms and Conditions, Number 11-W-00914/1, dated September 27, 2005, and that pursuant to this contingent grant of approval the Administration may begin implementation of the Demonstration Waiver Program on October 1, 2005 for the five year period, from October 1, 2005 through September 30, 2010.

(b) That the Joint Fiscal Committee's full approval to the Global Commitment to Health Demonstration Waiver Program be granted on or before November 17, 2005, if, on or before that time, the Joint Fiscal Committee finds that the following conditions have been met:

(1) *Complete demonstration provisions furnished.* That a complete and comprehensive listing and description of all the provisions of the Demonstration Waiver agreement be prepared and included in the letter of acceptance to CMS by the Office of Vermont Health Access (OVHA) and provided to the Joint Fiscal Committee, comparing the original proposal for the Demonstration Waiver Program with the outcome of negotiations with CMS; and that the Joint Fiscal Committee finds that these final provisions are in accord with the terms and conditions presented to the Joint Fiscal Committee as the basis for its contingent approval.

(2) *Final premium amounts determined to be sufficient.* That OVHA present to the Joint Fiscal Committee the final premium amounts adopted by the Agency of Human Services (AHS) upon actuarial certification, and that the Joint Fiscal Committee finds that such amounts are sufficient to support the Demonstration Waiver Program including the state's current Medicaid and expansion programs.

(3) *Agreement regarding future years' premiums.* That AHS work with CMS regarding the criteria utilized in future waiver years in order to ensure that future premiums will not be negatively affected by successful cost savings efforts achieved by the state, and that OVHA report to the Joint Fiscal Committee and the Health Access Oversight Committee on the status and provisions of any agreement reached.

(4) *MCO Savings Identified.* That OVHA present to the Joint Fiscal Committee a list of criteria and an updated list of MCO targeted health care investments that support the administration's recommendation that

the final value of the Demonstration Waiver program to the state is within the range of \$135 million to \$165 million.

(5) *Attorney General Review.* That the Attorney General review as to form the Special Terms and Conditions (STC), the Intergovernmental Agreement (IGA), and other legal documents regarding the demonstration Waiver program.

(c) That by granting contingent approval of the Demonstration Waiver program, the Joint Fiscal Committee cedes none of the authority of the General Assembly to determine policy, eligibility and benefits for the Medicaid program (including expansion programs), through legislative enactments, administrative rules review, the state budget and appropriations process, or any other means of legislative oversight. Further, the Joint Fiscal Committee affirm the legislature's commitment to providing health care benefits to low-income Vermonters through the Medicaid program.

(d) That pursuant to #40 of the Special Terms and Conditions, revenue from capitation payments will be used to reduce the rates of uninsured or underinsured and improve the access and quality of services to that group; that the approval letter from the Department of Health and Human Services also indicate the Department's understanding that "Vermont will demonstrate its ability to promote universal access to health care;" and therefore, to the extent that there is unused spending capacity as measured by the difference between the amount necessary to maintain the current Medicaid program and the Demonstration Waiver program's maximum certified premium, that unused spending capacity shall be used to fund health care initiatives authorized by the legislature to improve the access to and quality of health care services received by the uninsured and underinsured.

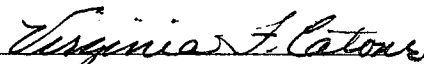
The motion was adopted by unanimous voice vote.

Prior to the vote, Senator Welch reiterated his concerns and reservations about Global Commitment. In his opinion, it represents a direction away from federal funding on an entitlement basis and reflects what he regarded as the current federal administration's negative attitude toward Medicaid. What is needed instead of global commitment, he believed, is a global budget and comprehensive health care reform. He thought it will provide some short-term relief rather than solve the Medicaid funding problem. He continued on to say that Vermont's obligation is to safeguard benefits for its citizens who depend on Medicaid, and that the Legislature has a long-standing bipartisan commitment to health care. Nevertheless, he viewed the waiver proposal as an opportunity to institute some reforms and he said he would vote to approve it.

After the Committee's vote, Senator Snelling said she considers it important to make clear that the agreement with CMS requires the State to continue to offer services to all who are eligible. She observed that there have been written reports to the contrary.

The meeting was adjourned at 4:20 p.m.

Respectfully submitted:


Virginia F. Catone
Joint Fiscal Office